

Assembly Bill No. 655

CHAPTER 439

An act to amend Sections 21702.5, 21705, 21706, 21707, and 21709 of, and to repeal and add Section 21710 of, the Business and Professions Code, relating to self-service storage facilities.

[Approved by Governor September 29, 2010. Filed with
Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 655, Emmerson. Self-service storage facilities.

Existing law, the California Self-Service Storage Facility Act, specifies remedies and procedures for self-service storage facility owners when occupants are delinquent in paying rent or other charges. Under existing law, if an owner sends an occupant a preliminary lien notice by certified mail, the owner may, upon the effective date of the lien, deny the occupant access to the space, enter the space, and remove property to safekeeping. However, if the owner sends the preliminary lien notice by first-class mail with certificate of mailing, the owner may not remove the property for at least 14 days following the effective date of the lien. Existing law requires owners to send occupants a notice of lien sale stating that the property will be sold to satisfy the lien after a date not less than 14 days following the date of mailing unless the amount of the lien is paid or the occupant returns a declaration in opposition to lien sale in a specified form. Existing law specifies procedures for an owner to enforce the lien following receipt of a declaration in opposition to lien sale. Existing law requires that a lien sale be advertised in a newspaper of general circulation in the judicial district where the sale is to be held, or posted in conspicuous places in the neighborhood of the proposed sale, as specified, and provides that prior to a lien sale, any person claiming a right to the goods may pay the amount necessary to satisfy the lien and reasonable expenses incurred for particular actions taken.

This bill would provide that, if the occupant has not paid the full amount specified within 14 days of the termination date specified in the preliminary lien notice, the lien will attach as of that date and the owner may deny the occupant access to the space, enter the space, and remove any property to safekeeping. The bill would require the owner to send the occupant a notice of lien sale stating, among other things, that the amount of the lien will continue to increase if rent is not paid; the property will be sold to satisfy the lien after a specified date that is not less than 14 days from the date of mailing unless the occupant executes and returns by certified mail a specified declaration in opposition to lien sale; the occupant may regain full use of the space by paying the full lien amount prior to the specified date; and

other information, as specified. The bill would require the lien sale to be advertised in a newspaper of general circulation in the county where the sale is to be held. The bill would provide that prior to any lien sale, any person claiming a right to the goods may pay the amount necessary to satisfy the lien together with one month's rent in advance, in which case the owner would retain the property pending a court order directing the disposition of the property. The bill would also prescribe procedures to be followed if a court order is not obtained and would make other technical changes.

The people of the State of California do enact as follows:

SECTION 1. Section 21702.5 of the Business and Professions Code is amended to read:

21702.5. (a) Any lien on a vehicle or vessel subject to registration or identification under the Vehicle Code which has attached and is set forth in the documents of title to the vehicle or vessel shall have priority over any lien created pursuant to this chapter.

(b) Any lien created pursuant to this chapter on a vehicle or vessel subject to registration or identification under the Vehicle Code shall be enforced in accordance with the provisions of Section 3071 of the Civil Code, in the case of a vehicle, or Section 503 of the Harbors and Navigation Code, in the case of a vessel, and not as prescribed in Sections 21705 to 21711, inclusive.

(c) Any lien created pursuant to this chapter on a vehicle or vessel subject to registration or identification under the Vehicle Code shall not include any charges for rent, labor, or other services incurred pursuant to the rental agreement, accruing more than 60 days after the date the lien imposed pursuant to this chapter attaches, as set forth in Section 21705, and before application is made for authorization to conduct the lien sale pursuant to the requirements of Section 3071 of the Civil Code or Section 503 of the Harbors and Navigation Code.

(d) Any proceeds from a lien sale shall be disposed of pursuant to Section 3073 of the Civil Code, in the case of a vehicle, or Section 507.5 of the Harbors and Navigation Code, in the case of a vessel.

SEC. 2. Section 21705 of the Business and Professions Code is amended to read:

21705. (a) If the notice has been sent as required by Section 21703 and the total sum due has not been paid within 14 days of the termination date specified in the preliminary lien notice, the lien imposed by this chapter attaches as of that date and the owner may do all of the following:

- (1) Deny an occupant access to the space.
- (2) Enter the space.
- (3) Remove any property found therein to a place of safekeeping.

(b) Upon taking the actions described in subdivision (a), the owner shall send to the occupant, addressed to the occupant's last known address, and to the alternative address specified in subdivision (b) of Section 21712, by

certified mail or by first-class mail, if the owner obtains a certificate of mailing, postage prepaid, both of the following:

(1) A notice of lien sale that states all of the following:

(A) That the occupant's right to use the storage space has terminated and that the occupant no longer has access to the stored property.

(B) That the stored property is subject to a lien, the current amount of the lien, and that the lien will continue to increase if rent is not paid.

(C) That the property will be sold to satisfy the lien after a specified date that is not less than 14 days from the date of mailing the notice, unless the occupant executes and returns by certified mail a declaration in opposition to lien sale in the form set forth in paragraph (2).

(D) A statement that the occupant may regain full use of the space by paying the full lien amount prior to the date specified in subparagraph (C).

(E) That any excess proceeds of the sale over the lien amount and costs of sale will be retained by the owner and may be reclaimed by the occupant or claimed by another person at any time for a period of one year from the sale and that thereafter the proceeds will escheat to the county in which the sale is to take place.

(2) A blank declaration in opposition to lien sale that shall be in substantially the following form:

DECLARATION IN OPPOSITION TO LIEN SALE

You must complete all sections of this declaration. If the owner cannot contact or serve you at the address and telephone number that you provide below, this declaration shall be void and the owner may sell your stored property.

I, _____, have received the notice of lien sale
(occupant's name)

of the property stored at _____ .
(location and space #)

I oppose the lien sale of the property, because (provide a brief explanation of the reason the owner's lien may not be valid. For example, "I have paid my rent and other charges in full"):

My address is:

(address) _____

(city) _____

(state) _____

(ZIP Code) _____

(telephone number) _____

I understand that the lienholder may file an action against me in any court of competent jurisdiction, including small claims court, at the address provided above, and if a judgment is given in his or her favor, I may be liable for the

court costs. I also understand that this declaration is not valid if (a) the address provided in this declaration is not my current address or (b) I change my address at any time prior to service of an action on the lien and I do not provide the owner the address within 10 days of the change.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was signed by me on _____ at _____ .
(date) (place)

(signature of occupant)

SEC. 3. Section 21706 of the Business and Professions Code is amended to read:

21706. If a declaration in opposition to the lien sale, executed under penalty of perjury, is not received by the owner on or prior to the date specified in the notice of lien sale by certified mail, is not completed and signed by the occupant, if the occupant cannot be contacted or served at the address provided in the declaration, or if the occupant withdraws the declaration in opposition to the lien sale in writing, the owner may, subject to the provisions of Sections 21708 and 21709, sell the property upon complying with the requirements set forth in Section 21707.

SEC. 4. Section 21707 of the Business and Professions Code is amended to read:

21707. After the expiration of the time given in the notice of lien sale, pursuant to subdivision (b) of Section 21705, or following the failure of a claimant to pay rent or obtain a court order pursuant to Section 21709, an advertisement of the sale shall be published once a week for two weeks consecutively in a newspaper of general circulation published in the county where the sale is to be held. The advertisement shall include a general description of the goods, the name of the person on whose account they are being stored, and the name and location of the storage facility. If there is no newspaper of general circulation published in the county where the sale is to be held, the advertisement shall be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale. The sale shall be conducted in a commercially reasonable manner. After deducting the amount of the lien and costs of sale, the owner shall retain any excess proceeds of the sale on the occupant's behalf. The occupant, or any other person having a court order or other judicial process against the property, may claim the excess proceeds, or a portion thereof sufficient to satisfy the particular claim, at any time within one year of the date of sale. Thereafter, the owner shall pay any remaining excess proceeds to the treasury of the county in which the sale was held.

SEC. 5. Section 21709 of the Business and Professions Code is amended to read:

21709. Prior to any sale pursuant to Section 21707, any person claiming a right to the goods may pay the amount necessary to satisfy the lien together with one month's rent in advance. In that event, the goods shall not be sold,

but shall be retained by the owner pending a court order directing the disposition of the property. If a court order is not obtained within 30 days following the date of the payment pursuant to this section, the claimant shall pay the owner the monthly rental charge for the space where the property is stored pursuant to the terms of the rental agreement. If the claimant does not pay this rent, the owner may sell or dispose of the personal property in accordance with Section 21707. The owner shall have no liability for the sale or other disposition of the personal property to any claimant who fails to secure a court order or pay the required rental charge as set forth in this section, provided the owner has fully complied with the requirements of this chapter.

SEC. 6. Section 21710 of the Business and Professions Code is repealed.

SEC. 7. Section 21710 is added to the Business and Professions Code, to read:

21710. (a) If a valid declaration in opposition to lien sale is received by the owner prior to the date set forth in the notice of lien sale, the owner may enforce the lien only as follows:

(1) File an action to enforce the lien in small claims court as provided in Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure, provided that the amount of the lien is within the monetary jurisdiction of the court. If the action is filed in small claims court, all of the procedures set forth in that chapter shall apply, including the procedures for service of the summons and complaint.

(2) File an action to enforce the lien in any other court of competent jurisdiction, in which case the summons and complaint may be served by certified mail, postage prepaid, addressed to the occupant at the address provided by the occupant in the declaration of lien sale, and service shall be deemed completed on the fifth day after the mailing, or in any other manner authorized by Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure.

(b) If the owner is granted a judgment in favor of the lien, the owner may advertise the goods for sale and sell the property as provided in Section 21707.